

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARTHUR L. VANWINKLE,

Defendant.

:

Case No. 3:07cr70

:

3:08cv415

:

JUDGE WALTER HERBERT RICE

:

DECISION AND ENTRY ADOPTING INITIAL (DOC. #32),
SUPPLEMENTAL (DOC. #34) AND SECOND SUPPLEMENTAL (DOC.
#37) REPORTS AND RECOMMENDATIONS OF UNITED STATES
MAGISTRATE JUDGE; DEFENDANT'S OBJECTIONS TO SAID JUDICIAL
FILINGS (DOCS. #33, #35 AND #39) OVERRULED; DEFENDANT'S
FIRST TWO CLAIMS DISMISSED, WITH PREJUDICE, UPON THE MERITS
AND AS PROCEDURALLY DEFAULTED; THIRD CLAIM DISMISSED,
WITHOUT PREJUDICE, AS NOT STATING A CLAIM UPON WHICH
RELIEF CAN BE GRANTED IN A SECTION 2255 PROCEEDING;
DEFENDANT'S ADDED CLAIM (DOC. #36) DISMISSED, UPON ITS
MERITS; JUDGMENT TO ENTER ACCORDINGLY, FINDING IN FAVOR OF
PLAINTIFF AND AGAINST DEFENDANT; MOTION FOR LEAVE TO
APPEAL *IN FORMA PAUPERIS* AND CERTIFICATE OF APPEALABILITY
GRANTED ONLY AS TO FOURTH CLAIM, ADDED BY DOC. #36;
REQUEST FOR APPOINTMENT OF COUNSEL DENIED; TERMINATION
ENTRY

Based upon the reasoning and citations of authority set forth by the United
States Magistrate Judge in his Initial (Doc. #32), Supplemental (Doc. #34) and
Second Supplemental (Doc. #37) Reports and Recommendations, as well as upon a
thorough *de novo* review of this Court's file and the applicable law, said Report

and Recommendations are adopted in their entirety, and Defendant's Objections thereto (Docs. #33, #35 and #39) are overruled. Judgment will enter in favor of the Plaintiff and against Defendant, dismissing the Defendant's first and second claims set forth in his Motion to Vacate, etc., filed pursuant to 28 U.S.C. Section 2255, upon their merits and as procedurally defaulted, dismissing his third claim for relief as failing to state a claim upon which relief can be granted under Section 2255 and dismissing the fourth claim for relief, upon its merits.

Given that reasonable jurists could disagree with this Court's opinion on the fourth claim for relief, that newly added by Doc. #36, this Court grants leave to Defendant to appeal *in forma pauperis* and, accordingly, issues a Certificate of Appealability on said fourth claim, newly added by Doc. #36.

Given that this Court sees no need for an evidentiary hearing and, further, that the issues raised by the Defendant's Motion to Vacate, etc., are purely legal in nature, the Defendant's request for appointment of counsel is denied.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 30, 2009

/s/ Walter Herbert Rice

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Arthur L. VanWinkle, Pro Se
Dwight K. Keller, Esq.